

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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EDWARD ORTIZ,

Petitioner,

-v.-

9:06-CV-0285  
(LEK)(DRH)

T.R. CRAIG,

Respondent.  
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APPEARANCES:

EDWARD ORTIZ  
Petitioner, *pro se*  
14506-014

GLENN T. SUDDABY  
Office of the United States Attorney  
Attorney for Respondent  
P.O. Box 7198  
100 S. Clinton Street  
Syracuse, New York 13261-7198

CHARLES E. ROBERTS, ESQ.  
Assistant United States Attorney

DAVID R. HOMER, U.S. MAGISTRATE JUDGE

**ORDER**

Presently before the Court is a Motion for an Evidentiary Hearing filed by Petitioner Edward Ortiz ("Petitioner" or "Ortiz"). Docket No. 6. Ortiz is presently confined at the Ray Brook Correctional Facility. Petitioner filed his Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 on March 6, 2006. The Respondent filed his Response to the Petition on June 8, 2006. Respondent has not filed any opposition to this Motion.

In this Circuit, the filing of a Habeas Petition does not entitle the Petitioner automatically to a hearing. *See Newfield v. United States*, 565 F.2d 203, 207-08 (2d Cir. 1977). Whether to hold an evidentiary hearing is within the discretion of the Court.

*Pagan v. Keane*, 984 F.2d 61, 63 (2d Cir. 1993). To warrant a hearing, the Petitioner must set forth detailed and controverted issues of fact that, if proved at a hearing, would entitle the Petitioner to relief.

While the Respondent has filed their papers in opposition to the Petition, those papers, together with full record, are under review by the Court. The Court has not yet determined whether an evidentiary hearing is required in this action. Ortiz' Habeas Petition will be addressed in due course and the Court will determine whether a hearing is warranted in this matter. Petitioner's request is therefore denied without prejudice.

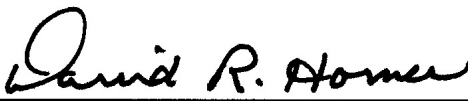
WHEREFORE, it is hereby

ORDERED, that Petitioner's Motion for an Evidentiary Hearing (Docket No. 6) is denied without prejudice, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: November 22, 2006  
Albany, New York

  
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United States Magistrate Judge